Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

DALE ARGO,

Petitioner,

v.

STATE OF TENNESSEE, and GEORGE LITTLE,
Commissioner of the Tennessee Department of Corrections,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a State prisoner bring an action pursuant to Title 42 U.S.C. § 1983 for a violation of due process rights when a State Court without notice to him changes his sentence which was based on a plea of guilty.

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Petitioner, Dale Argo, respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit No. 08-5659 is not published (Appendix A). The opinion of the District Court No. 3:07-CV-0350 is not published (Appendix B).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit [Court of Appeals] was entered on March 3, 2009.

The jurisdiction of this Court is involved under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Title 28 U.S.C. § 2254 states in pertinent part:

(a) ...
(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State Court shall not be granted unless it appears that –

STATEMENT OF THE CASE

On July 21, 1999, Dale Argo, the Petitioner [Argo], pled guilty in the Rutherford County, Tennessee Circuit Court to two Counts of Aggravated Sexual Battery. He received a sentence of eight (8) years on each count, with the sentences to be served concurrently. Argo was not aware that when he pled guilty that he would be under the supervision of community corrections for life. On February 9, 2006, towards the end of his imprisonment, Argo was informed that his judgment should have read "lifetime supervision." On April 12, 2006, Argo received the amended judgment order. Argo was released on May 26, 2006. On March 30, 2007, Argo filed suit claiming that he was never informed of this harsh penalty and that he only learned of it some seven (7) years after his guilty plea.

A. The effect of Argo's guilty plea

Argo pled guilty on July 21, 1999. At the time he believed he would receive two eight (8) year sentences to be run concurrently with each other. Tennessee Rules of Criminal Procedure, Rule 32(f) states in pertinent part:

(f) Withdrawal of Guilty Plea

(1) ...

(2) After Sentence But Before Judgment Final

After sentence is imposed but before the judgment is final, the Court may set aside the judgment of conviction and permit the defendant to withdraw the plea to correct manifest importance.

Argo's time to withdraw his guilty plea was long expired on February 9, 2006. Argo, in effect, was not informed of the seriousness of his actions at the moment of his decision. Thus, he was not given the opportunity to withdraw his plea.

B. Proceedings Below

Argo's Complaint alleges a violation of his due process rights by the State of Tennessee by not informing him of the effect of his guilty plea.

The District Court, concluded that Argo was prohibited from proceeding on his due process claim because it should have been brought pursuant to a Habeas Corpus Petition, Title 28 U.S.C. § 2254. The Court found Argo was in effect attempting to challenge his conviction or confinement. The District Court relied upon this Court's decisions in Heck v. Humphrey, 512 U.S. 477, and the Rooker-Feldman Doctrine, 460 U.S. 462 and 263 U.S. 413 in which this Court held that Federal Courts do not have jurisdiction to hear cases predicated upon conviction that the State Court was wrong in its decision.

The Sixth Circuit Court of Appeals echoed the District Court's decision by applying this Court's ruling in Heck to Argo's case.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH A DECISION OF THE SUPREME COURT

Argo comes before this Court claiming that his substantive due process rights were violated by the State. Before he pled guilty he was never informed that in doing so he would be sentenced to supervision by the Tennessee Department of Corrections for life.

When a person pleads guilty to a crime it is incumbent upon the State and the Trial Court to make sure that the accused understands the full extent of what the punishment will be as a result of his plea. That was not done in the case of Mr. Argo until seven years after his plea. This Court has recognized the ability of a prisoner to file a Section 1983 case which is not at the core of habeas corpus. Wilkinson v. Dotson, 554 U.S. 74 (2005) Argo is not claiming his sentence was invalid but rather he was denied due process. He is not seeking release from State custody. The decision of the Court of Appeals misconstrued Argo's claim. He is seeking redress of a violation of his constitutional right to due process - not release. The decision of the Court of Appeals is directly in conflict with this Court's decision in Wilkinson.

II.

QUESTION PRESENTED IS IMPORTANT

The question presented in this application is important because if left to stand Argo and others in his similar situation will be limited to the relief afforded by Habeas Corpus, which does not protect their constitutional rights to due process through informed consent before pleading guilty to crimes.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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